

Article 60.

Standards of Disclosure for Annuities and Life Insurance.

Part 1. Regulation of Life Insurance Solicitation.

§ 58-60-1. Short title; purpose.

- (a) This Part may be cited as the "Life Insurance Disclosure Act".
- (b) The purpose of this Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This Part does not prohibit an insurer from using additional material that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation. (1979, c. 447; 2005-234, s. 1.3.)

§ 58-60-5. Scope; exemptions.

- (a) Except as otherwise provided in this Part, this Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This Part applies to any issuer of a life insurance contract, including fraternal benefit societies.
- (b) Unless otherwise specifically included, this Part does not apply to:
 - (1) Individual and group annuity contracts.
 - (2) Credit life insurance.
 - (3) Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).
 - (4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).
 - (5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.
- (c) The policy summary in this Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations. (1979, c. 447; 1998-211, s. 14; 2005-234, s. 1.4.)

§ 58-60-10. Definitions.

Unless the context of use indicates a different meaning, for the purposes of this Part, the following definitions shall apply:

- (1) Buyer's Guide. – A Buyer's Guide is a document furnished pursuant to G.S. 58-60-15, which shall contain all the requirements of and be in substantial compliance with G.S. 58-60-25.
- (2) Cash Dividend. – A Cash Dividend is the current illustrated dividend which can be applied toward payment of gross premium.
- (3) Equivalent Level Annual Dividend. – The Equivalent Level Annual Dividend is calculated by applying the following steps:

- a. Accumulate the annual cash dividends at five percent (5%) interest compounded annually to the end of the 10th and 20th policy years;
 - b. Divide each accumulation of paragraph a of this subdivision by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in paragraph a of this subdivision over the respective periods stipulated in paragraph a of this subdivision. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
 - c. Divide the results of paragraph b of this subdivision by the number of thousands of the Equivalent Level Death Benefit to arrive at the Equivalent Level Annual Dividend.
- (4) Equivalent Level Death Benefit. – The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:
 - a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for 10 and 20 years at five percent (5%) interest compounded annually to the end of the 10th and 20th policy years respectively;
 - b. Divide each accumulation of paragraph a of this subdivision by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph a of this subdivision over the respective periods stipulated in paragraph a of this subdivision. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
- (5) Generic Name. – Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.
- (6) Life Insurance Cost Indexes. –
 - a. Life Insurance Surrender Cost Index. The Life Insurance Surrender Cost Index is calculated by applying the following steps:
 - 1. Determine the guaranteed cash surrender value, if any, available at the end of the 10th and 20th policy years;
 - 2. For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at five percent (5%) interest compounded annually to the end of the period selected and add this sum to the amount determined in subdivision a;
 - 3. Divide the result of subparagraph 2 (subparagraph 1 for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual that, if paid at the beginning of each year, would accrue to the value in subparagraph 2 (subparagraph 1 for guaranteed-cost policies) over the respective periods stipulated in subparagraph 1. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719;
 - 4. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at five percent (5%) interest compounded annually to the end of the

- period stipulated in subparagraph 1 and dividing the result by the respective factors stated in subparagraph 3 (this amount is the annual premium payable for a level premium plan);
5. Subtract the result of subparagraph 3 from subparagraph 4;
 6. Divide the result of subparagraph 5 by the number of thousands of the Equivalent Level Death Benefit to arrive at the Life Insurance Surrender Cost Index.
- b. Life Insurance Net Payment Cost Index. The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Cost Index except that the cash surrender value and any terminal dividend are set at zero.
- (7) Policy Summary. – Policy Summary means a written statement describing the elements of the policy including but not limited to:
- a. A prominently placed title in at least 10-point boldface capital letters as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;
 - b. The name and address of the insurance agent, or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary;
 - c. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written;
 - d. The Generic Name of the basic policy and each rider;
 - e. The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which Life Insurance Cost Indexes are displayed and at least one age from 60 through 65 or maturity, whichever is earlier:
 1. The annual premium for the basic policy;
 2. The annual premium for each optional rider;
 3. Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;
 4. Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
 5. Cash Dividends payable at the end of the year with values shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the 20th policy year);
 6. Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.
 - f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the Policy Summary includes the maximum annual percentage rate;

- g. Life Insurance Cost Indexes for 10 and 20 years but in no case beyond the premium paying period. Separate indexes must be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for basic policies or optional riders covering more than one life;
- h. The Equivalent Level Annual Dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which Life Insurance Cost Indexes are displayed;
- i. A Policy Summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed in addition to a statement in close proximity to the Equivalent Level Annual Dividend as follows: An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide;
- j. A statement in close proximity to the Life Insurance Cost Indexes as follows: An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide.
- k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State. (1979, c. 447; 2005-234, ss. 1.5, 1.6.)

§ 58-60-15. Disclosure requirements.

(a) The insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting any applicant's initial premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least 10 days or unless the Policy Summary contains such an unconditional refund offer, in which event the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a Buyer's Guide and a Policy Summary to any prospective purchaser upon request.

(c) In the case of policies whose Equivalent Level Death Benefit does not exceed five thousand dollars (\$5,000), the requirement for providing a Policy Summary will be satisfied by delivery of a written statement containing the information described in G.S. 58-60-10(7), subdivisions b, c, d, e1, e2, e3, f, g, j, and k. (1979, c. 447; 1993, c. 553, s. 21.)

§ 58-60-20. General rules relating to solicitation.

(a) Each insurer subject to this Part shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this Part. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

(b) An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which he is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

(c) Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

(d) Any reference to policy dividends must include a statement that dividends are not guaranteed.

(e) A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.

(f) A presentation of benefits shall not display guaranteed and nonguaranteed benefits as a single sum unless they are shown separately in close proximity thereto.

(g) A statement regarding the use of the Life Insurance Cost Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

(h) A Life Insurance Cost Index which reflects dividends or an Equivalent Level Annual Dividend shall be accompanied by a statement that it is based on the insurer's current dividend scale and is not guaranteed.

(i) For the purposes of this Part, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium. (1979, c. 447; 2005-234, ss. 1.7, 1.8.)

§ 58-60-25. Adoption of Buyer's Guide; requirements.

Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance

Solicitation Regulations shall be in compliance with the requirements of this Part. (1979, c. 447; 2005-234, s. 1.9.)

§ 58-60-30. Failure to comply.

The failure of an insurer to provide or deliver a Buyer's Guide, or a Policy Summary as provided in G.S. 58-60-15(a) and (b) shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy within the meaning of G.S. 58-58-40 and Article 63 (Unfair Trade Practice Act) of this Chapter. (1979, c. 447.)

§ 58-60-35. Disclosure of prearrangement insurance policy provisions.

(a) As used in this section:

- (1) "Prearrangement" means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of specific funeral services, or the furnishing or delivery of specific personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.
- (2) "Prearrangement insurance policy" means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued on a group or individual basis by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for its sole purpose the funding of a specific preneed funeral contract or a specific insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.

(b) The following information shall be adequately disclosed by the insurance agent or limited representative at the time an application is made, prior to accepting the applicant's initial premium, for a prearrangement insurance policy:

- (1) The fact that a prearrangement insurance policy is involved or being used to fund a prearrangement;
- (2) The nature of the relationship among the insurance agent or limited representative, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;
- (3) The relationship of the prearrangement insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
- (4) The effect on the prearrangement of (i) any changes in the prearrangement insurance policy, including but not limited to, changes in the assignment, beneficiary designation, or use of the policy proceeds; (ii) any penalties to be incurred by the insured as a result of failure to make premium payments; and

- (iii) any penalties to be incurred or monies to be received as a result of cancellation or surrender of the prearrangement insurance policy;
- (5) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the policy proceeds and the amount actually needed to fund the prearrangement; and
- (6) Any penalties or restrictions, including geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee. (1989, c. 738, s. 1; 1991, c. 644, s. 10; 1995, c. 517, s. 32.)

Part 2. Regulation of Small Face Amount Life Insurance Solicitation.

§ 58-60-90. Title and reference.

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act". (2005-234, s. 1.10.)

§ 58-60-95. Purpose; intent; and scope.

- (a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.
- (b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars (\$15,000) or less.
- (c) This Part does not apply to:
 - (1) Variable life insurance.
 - (2) Individual and group annuity contracts.
 - (3) Credit life insurance.
 - (4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:
 - a. Every plan of coverage was selected by the employer or other group representative;
 - b. Some portion of the premium is paid by the group or through payroll deduction; and
 - c. Group underwriting or simplified underwriting is used.
- (5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code. (2005-234, s. 1.10.)

§ 58-60-100. Disclosure requirements.

- (a) An insurer issuing a small face amount policy where, over the term of the policy, the cumulative policy premiums paid may exceed the face amount of the policy, shall clearly and prominently disclose, on or before policy delivery, the length of time until the cumulative policy premiums paid may exceed the face amount of the policy.
- (b) If an insurer is required to provide a disclosure under subsection (a) of this section, the insurer shall clearly and prominently disclose, on or before policy delivery, available premium payment plan and product alternatives. If no alternatives exist, the insurer shall clearly and prominently disclose that there are no such alternatives.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders. (2005-234, s. 1.10.)

§ 58-60-105. Insurer duties.

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement. (2005-234, s. 1.10.)

Part 3. Regulation of Annuity Solicitation.

§ 58-60-120. Title and reference.

This Part may be cited as the "Annuity Disclosure Act". (2005-234, s. 1.11.)

§ 58-60-125. Purpose; intent; scope.

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

- (1) Registered or nonregistered variable annuities or other registered products.
- (2) Immediate and deferred annuities that contain no nonguaranteed elements.
- (3) Annuities used to fund any of the following:
 - a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA).
 - b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer.
 - c. A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Structured settlement annuities.
 - f. Charitable gift annuities.
 - g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers, and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement. (2005-234, s. 1.11.)

§ 58-60-130. Definitions.

As used in this Part:

- (1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.
- (2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.
- (3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.
- (4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.
- (5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-140.
- (6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.
- (7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".
- (8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.
- (9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.
- (10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment. (2005-234, s. 1.11.)

§ 58-60-135. Standards for the disclosure document and buyer's guide.

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-140 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free-look period shall run concurrently with any other free-look period provided under State law or regulation. (2005-234, s. 1.11.)

§ 58-60-140. Contents of disclosure document.

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

- a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.
 - b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.
 - c. Periodic income options both on a guaranteed and nonguaranteed basis.
 - d. Any value reductions caused by withdrawals from or surrender of the contract.
 - e. How values in the contract can be accessed.
 - f. The death benefit, if available, and how it will be calculated.
 - g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.
 - h. The impact of any rider, such as a long-term care rider.
- (4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.
 - (5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed. (2005-234, s. 1.11.)

§ 58-60-145. Report to contract owners.

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

- (1) The beginning and end dates of the current report period.
- (2) The accumulation and cash-surrender value, if any, at the end of the previous report period and at the end of the current report period.
- (3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.
- (4) The amount of outstanding loans, if any, as of the end of the current report period. (2005-234, s. 1.11.)

Part 4. Suitability in Annuity Transactions.

§ 58-60-150. (Contingent repeal – see note) Title and reference.

This Part may be cited as the "Suitability in Annuity Transactions Act". (2007-298, s. 1.1; 2017-136, s. 5.)

§ 58-60-155. (Contingent repeal – see note) Purpose; scope.

(a) The purpose of this Part is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so

that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(b) This Part shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended. (2007-298, s. 1.1; 2017-136, s. 5.)

§ 58-60-160. (Contingent repeal – see note) Exemptions.

Unless otherwise specifically included, this Part does not apply to recommendations involving any of the following:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part.
- (2) Contracts used to fund any of the following:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).
 - b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer.
 - c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.
 - f. Formal prepaid funeral contracts. (2007-298, s. 1.1; 2017-136, s. 5.)

§ 58-60-165. (Contingent repeal – see note) Definitions.

As used in this Part:

- (1) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
- (2) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).
- (3) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice. (2007-298, s. 1.1; 2017-136, s. 5.)

§ 58-60-170. (Contingent repeal – see note) Duties of insurers and insurance producers.

(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Before recommending the purchase or exchange of an annuity resulting from a recommendation, the insurance producer, or the insurer where no producer is involved, shall make reasonable efforts to obtain information about the particular consumer's circumstances, including, but not limited to, all of the following:

- (1) The consumer's financial status.
- (2) The consumer's tax status.
- (3) The consumer's investment objectives.
- (4) Any other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(c) Except as provided under subdivision (1) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection (a) of this section related to any recommendation if a consumer does any of the following:

- (1) Refuses to provide relevant information requested by the insurer or insurance producer. An insurer or insurance producer's recommendation subject to this subdivision shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
- (2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer.
- (3) Fails to provide complete or accurate information requested by the insurer or insurance producer.

(d) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Part is established and maintained by complying with subsections (e), (f), and (g) of this section, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures.
- (2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Part.

(e) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Part, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures.

- (2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Part.

(f) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subsection (d) of this section with respect to insurance producers under contract with, or employed by, the third party. An insurer shall make reasonable inquiry to assure that the third-party contracting under this subsection is performing the functions required under subsection (d) of this section and shall take any action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- (1) The insurer annually obtains a certification from a third-party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions. No person may provide a certification under this subdivision unless (i) the person is a senior manager with responsibility for the delegated functions; and (ii) the person has a reasonable basis for making the certification.
- (2) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

An insurer that contracts with a third party, and that complies with the requirements to supervise the third party pursuant to this subsection, shall have fulfilled its responsibilities under subsection (d) of this section.

A general agent or independent agency contracting with an insurer shall promptly, when requested by the insurer pursuant to this subsection, give a certification as described in this subsection or give a clear statement that it is unable to meet the certification criteria.

(g) An insurer, general agent, or independent agency is not required by subsections (d) or (e) of this section to:

- (1) Review, or provide for review of, all insurance producer solicited transactions; or
- (2) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(h) Compliance with the Financial Industry Regulatory Authority Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of annuities subject to the Conduct Rules. Nothing in this subsection limits the Commissioner's ability to enforce the provisions of this Article. (2007-298, s. 1.1; 2009-382, s. 36; 2017-136, s. 5.)

§ 58-60-175. (Contingent repeal – see note) Mitigation of responsibility.

- (a) The Commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Part.
 - (2) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Part.
 - (3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Part.
- (b) Any applicable penalty under G.S. 58-2-70 for a violation of subsection (a) or (b) of G.S. 58-60-170 may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.
- (c) A violation of this Part is an unfair method of competition and unfair and deceptive act or practice in the business of insurance in violation of G.S. 58-63-10. (2007-298, s. 1.1; 2017-136, s. 5.)

§ 58-60-180. (Contingent repeal – see note) Record keeping.

- (a) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- (b) Records required to be maintained by this Part may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document. (2007-298, s. 1.1; 2017-136, s. 5.)